IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7666 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

UMARJI ADAM ISMAIL PATEL

Appearance:

MR HARDIK RAVAL for Petitioner

MR KS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 09/03/2001

ORAL JUDGEMENT

1. The petitioner - State Road Transport Corporation challenges the award of the Labour Court, Surat in Reference (LCS) No. 34 of 1983 made on 5/12/1987, by which the Reference was partly accepted and the order of

dismissal of the respondent workman which was made on 14/6/1979 was set aside. The respondent was ordered to be reinstated in service without any back wages.

2. It has been contended on behalf of the petitioner that though the guilt of the respondent workman was clearly established and the Labour Court upheld the findings and even observed that it was evident from the misconduct committed by the delinquent that he did not deserve any sympathy, the Labour Court observing that one more chance may be given to him in the interest of justice, directed him to be reinstated by setting aside the order of his dismissal. It was submitted that such a course was not warranted in view of the ratio of the decision of the Supreme Court in Janatha Bazar v/s. The Secretary, Sahkari Noukarara Sangha reported in 2000 (6) Supreme 339.

3. From the record it appears that the respondent delinquent was charged on various counts of misconduct which all showed misappropriation of money. It was alleged that at the time when the bus, in which he was a Conductor, was checked on 14/2/1979 it was noticed that he had defalcated Rs.742/-. It was noted that as per the sale of the tickets there ought to have been 98 passengers while there were only 19 passengers in the bus. It was further alleged that on 26/1/1979 when he was the Conductor in the bus going from Surat to Chhota Udepur it was noted while checking that he had misappropriated a sum of Rs.204/-. Again on 13/2/1979 it was noticed that he had not deposited a sum of Rs.510/realised by him from the sale of 55 tickets. The necessary charges were served on the respondent delinquent on 9/3/1979, but admittedly he did not send any reply. Thereafter, on 11/4/1979 he was required to remain present for a hearing on 2/5/1979, but he did not avail of that opportunity. He was again called for personal hearing on 29/5/1979 by the registered notice dated 7/5/1979, but he did not respond. Therefore, the departmental representative was heard and on the charges being established, a show cause notice dated 1/5/1979 was sent to the delinquent and, ultimately, he came to be dismissed by the order dated 14/6/1979.

4. Before the Labour Court all that the respondent delinquent did was to make an application requesting the Labour Court to treat his misconduct as a minor misconduct and reinstate him in service. That Labour Court entirely ignoring the nature of the serious allegations which were established against the delinquent showing that he had defalcated various amounts while

working as a Conductor and though observing that he did not deserve any sympathy, suddenly somersaulted by saying that he should be given one last opportunity by giving him benefit of the social welfare legislation. The provisions of the Industrial Law are not intended to protect workman who indulge in corruption. When the misconduct in the nature of misappropriation of various amounts is established against this bus Conductor, who is a public servant, there can arise no question of showing any sympathy to him. Such misplaced sympathy would in fact be against social welfare and it would be in the interest of public to weed out such corrupt persons whenever such allegations are established as in the instant case. The Labour Court, therefore, erroneously exercised its jurisdiction in setting aside the punishment of dismissal which was rightly imposed on the respondent delinquent. As held by the Supreme Court in Janatha Bazar's case (supra) it would be an unjustified direction to reinstate an employee against whom charges of misappropriation are established. It was held that an act of misappropriation cannot be taken lightly and misappropriation cannot be rewarded or legalised by reinstatement in service.

One may recall the observations made by the Division Bench in Gujarat State Road Transport Corporation v/s. Jamnadas reported in 1982 G.L.H. 1057 in which the then Chief Justice Hon'ble Mr. Justice M.P. Thakkar while dealing with a similar case of misconduct by a bus Conductor of the petitioner Corporation observed:-

> "If a bus Conductor has been dismissed in such circumstances, his reinstatement in the same post would enable him to indulge in the same malpractice in future. Everyday he has to collect fare and issue tickets. Reinstatement in the same post would therefore, involve grave risk because of the repetitive opportunity that he would get to indulge in the malpractice and the daily temptation that he would face."

It was also observed that :

> "In case misappropriation by a Conductor is detected and he is found guilty, punishment must be deterrent to him as also the others, for misappropriation in such circumstances would be in relation to public moneys and the burden would

fall on the shoulders of common man."

In the above view of the matter, the impugned award dated 5/12/1997 cannot be sustained and is hereby set aside. Rule is made absolute accordingly. Interim relief shall stand vacated.

[R.K. ABICHANDANI, J.]

* Pansala.